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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CYNTHIA SIMS,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Defendant and Respondent.

B206105

(Los Angeles County
Super. Ct. No. BS 107561)

APPEAL from a judgment of the Superior Court of Los Angeles County.

David P. Yaffe, Judge. Affirmed.

Cynthia Sims, in pro. per., for Plaintiff and Appellant.

Gutierrez, Preciado & House and Calvin House for Defendant and Respondent.

Petitioner Cynthia Sims sought a writ of mandate requiring the Los Angeles County Civil Service Commission (Commission) to reinstate the hearing on her termination from employment by the Department of Children and Family Services (DCFS) or, in the alternative, requiring DCFS to reinstate Sims' employment and renegotiate the terms of the settlement between the parties. The trial court denied the writ. We affirm.

FACTS AND PROCEEDINGS BELOW

The DCFS terminated Sims' employment as an Intermediate Clerk Typist in April 2004 for failure to follow instructions and discourtesy to supervisors. Sims filed a timely appeal to the Commission in which she was represented by counsel (apparently provided by her union). The hearing commenced on October 21, 2005. After the first witness for the DCFS testified, the parties announced they had reached a settlement and placed the terms of the settlement on the record of the hearing. The settlement provided in relevant part that DCFS would reinstate Sims with three months back pay in return for Sims' acceptance of a 20-day suspension. Sims' attorney filed a written withdrawal of Sims' appeal "based upon a settlement of the above matter which was set forth in the record."

On November 3, 2005, the Commission cancelled Sims' appeal noting that it had received a communication from Sims' attorney withdrawing her appeal "based on a settlement reached."

On November 10, 2005 Sims filed a letter with the Commission stating that "[a]fter carful [*sic*] consideration and thought I cannot in good conscious [*sic*] accept the Los Angeles County's offer or the condition in which they want me to return. [¶] I am resending [*sic*] my decision to accept their offer. My attorney . . . has not put up a defense for me therefore I would like the opportunity to question the county's witnesses." The letter closed with a request that the Commission "put this appeal back on calendar."

In a letter dated November 23, 2005, the Commission responded to Sims' request to reinstate her appeal. The response stated that the Commission's decision to cancel the hearing based on a settlement and withdrawal of the appeal was final and there are no provisions in the civil service rules that would allow the Commission to reconsider that decision.

Sims then filed an unverified petition for a writ of administrative mandamus naming the Commission as respondent and DCFS as real party in interest. In addition to the facts stated above, the petition contains the following additional allegations. Sims never received the Commission's November 2005 letter through the mail and only found out about the Commission's decision not to reinstate her appeal more than a year later when she went to the Commission's office on December 4, 2006 to determine the status of her case. If she had timely received the Commission's letter refusing to reinstate her appeal, she would have accepted the DCFS's settlement offer. At unspecified times Sims received "misleading information from the Commission . . . as to the status of her case" causing her to believe that the Commission had placed her case back on calendar. At other unspecified times the Commission failed to "relat[e] to Petitioner, upon personal request, the true status of the proceedings held, when asked to do so." As a result of this failure, Sims was "precluded . . . from having the ability to take the original offer made by the [DCFS]." Sims alleges that she "believes that the acts by the Commission deprived her of the opportunity to exercise any rights she had to employment with the [DCFS]."

The petition further alleges that Sims "has not been given the notice and opportunity to be heard and should be given such in accordance with her due process rights." Finally, the petition alleges that the Commission denied Sims due process of law because the notice of the Commission's decision not to afford her a new hearing was not reasonably calculated to reach her because it was given "through an attorney who was no longer representing her and as such notice to Petitioner's former attorney cannot be imputed to Petitioner."

Sims prays for a “peremptory writ of mandamus setting aside [the Commission’s] decision to not grant Petitioner a hearing on the issues of her case” or, in the alternative, to “allow Petitioner to resume her employment with the County of Los Angeles and re-negotiate the offer given [at the October 2005 hearing].”

The trial court denied the petition and Sims filed a timely appeal.

DISCUSSION

Sims contends that duress and the ineffective assistance of her counsel entitle her to rescind her settlement agreement with the DCFS and to negotiate a new agreement or, if no new agreement can be reached, to reinstate her appeal from her termination. Sims has failed to show grounds for rescission.

Sims raised her duress or emotional distress claim for the first time in her reply brief in the trial court. She stated that prior to the hearing she spoke to her attorney “about the mishandling of her case [and] his reply was ‘can you afford to hire an attorney?’” This comment caused her to want to reschedule the hearing. Her desire for a continuance became even stronger when her daughter’s school called her during a break in the hearing and informed her that her daughter had been involved in a fight. She wanted to postpone the hearing, she stated, so that she could leave and go to her daughter’s school but “[t]hey didn’t want to reschedule the hearing as she had asked; they told her to wait [because] the hearing wouldn’t take long; she had no choice but to continue.”

The record does not support Sims’ claim of duress or emotional distress but even assuming that Sims was under stress when she agreed to the settlement, it was not the kind of legal duress that would justify rescinding the settlement agreement. The lack of a job, financial problems and family issues are among the common sources of stress in today’s society. Furthermore, the decision whether to grant the continuance that Sims requested was within the sound discretion of the hearing officer. Sims has not presented sufficient evidence to show that the officer abused his discretion.

Next, Sims claims that she is entitled to rescind her agreement with DCFS because she was denied “effective assistance of counsel.” This claim fails because,

generally speaking, there is no constitutional or statutory right to appointed counsel in a civil proceeding, including an administrative proceeding (*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 539-540) and no right to counsel applied in the case before us. Consequently, a litigant in a civil or administrative proceeding does not have a constitutional or statutory right to the effective assistance of counsel. (*Glick v. Henderson* (8th Cir. 1988) 855 F.2d 536, 541.) All of the “ineffective assistance” cases Sims cites in her reply brief involved *criminal* proceedings. Sims’ remedy for her counsel’s alleged ineffective assistance in appealing her discharge from employment is a suit against the attorney for malpractice, not a rescission of the settlement agreement with her employer.

Finally, we find no merit in Sims’ contention that the Commission denied her due process in failing to timely notify her that it had denied her request to reinstate her appeal. The record shows that on November 10, 2005 Sims wrote to the Commission requesting that it reinstate her hearing. The record contains a certified proof of service showing that the Commission mailed a notice denying Sims’ request to a certain address on November 23, 2005. Sims does not contend that the Commission used an erroneous address in responding to her request, only that she had problems receiving mail at that address. There is no evidence, however, that the Commission knew about these “problems.” Due process does not require that notice actually reach the party to whom it is directed, only that it be reasonably calculated to do so. (*Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 315 [“The means employed must be such as one desirous of actually informing the [person] might reasonably adopt to accomplish it”].) Sims has made no showing that the Commission acted unreasonably in selecting the address for the notice.¹

¹ We note that the address the Commission used is the same address Sims used on the briefs filed in this court and the pleadings and documents she filed in the trial court.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

TUCKER, J. *

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.